

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 24 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

GHELABHAI BHAGVANBHAI  
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Appearance:

GOVERNMENT PLEADER for Petitioner  
MR SS BELSARE for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 18/08/2000

ORAL JUDGEMENT

1. This Second Appeal is filed by the State being aggrieved by the judgement and decree passed by the learned IInd Extra Assistant Judge, Vadodara in Civil

Appeal No.298 of 1981 decided on 5th April, 1984 whereby IInd Extra Assistant Judge, Vadodara confirmed the judgement and decree passed in Regular Civil Suit No. 1408 of 1975 by the learned Civil Judge (S.D.), Vadodara.

2. The present respondent, as per the brief facts of the case, purchased the suit land admeasuring 2 Acres 10 Gunthas situated at the Village Ambapura, Taluka: Naswadi by a registered sale deed for Rs.2000/- on 15th March, 1967. The revenue records were duly mutated in pursuance of this sale. However, thereafter, the Assistant Collector, Dabhoi initiated a proceeding under section-73A of the Bombay Land Revenue Code on the ground that the said transaction of the suit land was hit by section-73A of the Bombay Land Revenue Code. Being aggrieved, the present respondent, plaintiffs in the original suit, preferred appeal to the Collector, Baroda. The Collector-Baroda pleased to set aside the order of the Assistant Collector, Dabhoi vide his order dated 4th February, 1972. The Government then, filed a revision before the Deputy Secretary (Revenue) being aggrieved by the order of the Collector setting aside the order of the Assistant Collector, Dabhoi. The Deputy Secretary (Revenue) vide order dated 30th June, 1975 set aside the order of the Collector-Baroda and decided that the transaction regarding the suit land was hit by section-73A and was covered by notification dated 4th April, 1961. The Dy. Secretary (Revenue) remanded the matter for action being taken under section-79A for the summary eviction under the Bombay Land Revenue Code. It was further ordered that the land be granted to defendant no.2, the original owner of the suit land. Therefore, the present respondent filed the above mentioned Regular Civil Suit No. 1408 of 1975 in the Court of Civil Judge (S.D.) for a declaration that the order of the Dy. Secretary (Revenue) was bad in law, illegal, void and without jurisdiction. The plaintiffs filed suit after issuing a statutory notice under section-80 of the Civil Procedure Code.

3. The learned Civil Judge (S.D.) decreed the suit of the plaintiff and declared that the order of the Dy. Secretary dated 30th June 1975 in Revision Application No. SS/RD/LND/B/100/75 was not operative and not binding to the plaintiff and the same was ultra vires The authority of the State Government. Permanent injunction was also passed restraining the Government from taking any action against the plaintiff so as to dispossess him of the suit land. Being aggrieved, the State filed Civil Appeal No.288 of 1981 in the Court of District Judge, Baroda and by judgement and order dated 29th August,

1981, the learned IInd Extra Asst. Judge-Baroda dismissed the appeal. Hence, this Second Appeal by the State of Gujarat.

4. The learned AGP, Mr. Gharania, on behalf of the appellant and learned Advocate, Ms. S.G. Gandhi, on behalf of Mr. S.S. Belsare, were heard at length.

5. Section-73A of the Bombay Land Revenue Code provides as under :

73A. Power to restrict right of transfer.--

(1) Notwithstanding anything in the foregoing section, in any tract or village to which the (State Government) may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, occupancies shall not after the date of such notification be transferable without the previous sanction of the Collector.

(2) The State Government may, by notification in the official Gazette, from time to time exempt and part of such tract or village or any person or class of persons from the operation of this section.

6. Thus, the State Government is authorised to issue a notification to the effect that occupancies in the area covered under the notification shall not be transferable without previous sanction of the Collector. This power are subject to one rider and that is the Government has powers to introduce these provisions to the areas in which the survey settlement as per section-103 of the Bombay Land Revenue Code has not taken place. Meaning thereby, if the survey settlement in pursuance of section-103 of the Bombay Land Revenue Code has taken place, the Government then is not authorised to issue notification as envisaged by section-73A of the Bombay Land Revenue Code. Section-103 of the Code has now been repealed and Chapter-8 is inserted in the Bombay Land Revenue Code which deals with the assessment of revenue and its settlement.

7. Both the Courts below have carefully examined this issue and relying upon the evidence of the original Jagirdar of the area, one Mr. Balwantsingh Jethisingh Chauhan who was examined at Exh.35, came to the conclusion that the survey settlement in the area had already been done as long back as in the year 1936 and witness Balwantsingh produced on the record, Exh.36 and

37 documents denoting recoveries of revenue settlements from 1936. Both the Courts below have concluded, therefore, that Exh.36 and 37 were sufficient to show that the survey settlement was done and revenue was assessed and that the same assessment was not on adhoc basis, but it was a survey settlement. Once an agricultural land is assessed to the payment of land revenue, ordinary presumption is that the settlement, as contemplated in the Chapter-8A of the Bombay Land Revenue Code, has been introduced and applied in respect of such land.

8. In this view of the matter, it is amply clear from the evidence on record that the land in question was surveyed for the revenue settlement in 1936 and the notification of the Government for such a land was issued in 1961. The fact remains that section-73A under which the State Government has power to issue notification would be made applicable only to the land for which no survey settlement has been carried out as per Chapter-8A of the Bombay Land Revenue Code.

9. Survey settlement carried out for this land must be deemed to be survey settlement under Chapter-8A of the Bombay Land Revenue Code. This Court is fortified in this view by a decision of this Court in the matter of Bhanabhai Bhikhabhai Vs Babubhai Naransingh and otrs. reported in 15 G.L.T. page-144. This Court observed that :

"If we turn to the Bombay Government's resolution dated 6/2/1952 and also to the proviso to clause 5 of the Indian States (Application of Laws) Order, 1948, it appears clear that the repeal by this order of any enactment shall not affect the validity, liability etc. already acquired, accrued or incurred under State laws. It is also further clear that by virtue of this proviso, the survey settlements already effected in the merged states under the corresponding laws will be saved. It is too late in the day now for the State of Gujarat to say in the year 1961 that those survey settlements cannot be deemed to have been made under the Land Revenue Code.

The notification in question does not apply to the land and consequently the orders of the authorities below are liable to set aside."

10. Therefore, it is a clear case wherein a notification under section-73 of the Bombay Land Revenue Code is sought to be introduced by the State of Gujarat

for the land for which revenue settlement has already been carried out before issuing the notification in 1961, and consequently, issuance of notification is without authority and the action sought to be taken by the State of Gujarat under section-79A of the Bombay Land Revenue Code is illegal and void.

11. Substantial question in the Second Appeal is framed that whether in the facts and circumstances of the case, the lower Courts were right in law in coming to the conclusion that the sale deed in question was not hit by section-73A of the Bombay Land Revenue Code in view of the notification published on 4th April, 1961.

12. In view of the aforesaid discussion, the sale in question is not hit by section-73A of the Bombay Land Revenue Code because both the Courts below have rightly held that section-73A was not applicable to the suit land and the transaction in question as the revenue settlement had already been carried in respect to suit land long before 4th April, 1961, the date on which the notification under section-73A was published.

13. In this view of the matter, the appeal stands dismissed with no order as to costs. Rule discharged.

(J.R. Vora, J.)

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